



**Republic v Kipngetch (Criminal Case E031 of 2021)
[2023] KEHC 24245 (KLR) (26 October 2023) (Sentence)**

Neutral citation: [2023] KEHC 24245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E031 OF 2021
RB NGETICH, J
OCTOBER 26, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

LYDIAH JELAGAT KIPNGETICH ACCUSED

SENTENCE

1. The accused Lydia Jelagat Kipngetch had been charged with the offence of murder contrary to section 203 and 204 of the *Penal Code*. The particulars of the charge being that the accused on the 24th day of September, 2021 at Kabel shopping Centre, Marigat Sub- County within Baringo County the accused murdered David Kiprop Changole.
2. The charge was read over to the accused who denied the charge and the matter was set down for full hearing. However, when the matter came up for mention on the 13th March, 2023, the defence counsel Mr. Kipkulei informed the court that the accused had requested for plea bargaining and requested for more time to pursue the same.
3. On the 18th July, 2023 the plea agreement was duly executed reducing the charge to manslaughter following a plea-bargaining agreement. The charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code* and its particulars were read over and explained to the accused who pleaded guilty and was convicted on his own plea of guilty.

Brief Facts Of The Offence

4. The facts surrounding the case are that on the night of 23rd and 24th September, 2021 one Shaleen Jemutai Changolea a girl aged 10 years old was awakened by the accused's unusual movements. She saw the accused herein hit the deceased aged 7 years old who was also asleep with a bolt nuted Rungu at the back of the head before suffocating him with a blanket and hiding the dead body under the bed.



Prior to the incident accused had been a house girl in the household employed by the father of both the deceased and Shaleen.

1. On the 24th September, 2021 the murder incident was reported by Patrick Kimosop at Kabel Police Post after which police officers visited the scene and established that the deceased was murdered and his lifeless body hidden under a bed in their house. The deceased's father is a prison warden based at Rumuriti but was not present during the incident. The police also found out that the deceased mother one Linda Changole was attacked and assaulted by the same accused person by cutting her with a panga inflicting cut injuries on her forehead, head, hands and at the back, prior to her killing the deceased. Police did not find the mother of the deceased in the house as she had been rushed to Nyahururu charity Hospital by neighbours.
6. The deceased's body bore no physical injuries but some blood stains were observed on the mouth. Blood stains were also notable inside and outside the house and by the time the neighbors and the police arrived at the scene, the assailant had vanished. Police officers from Kabel police post arrived at the scene and removed the deceased's body from the scene to Nyahururu referral hospital mortuary pending autopsy.
7. Upon investigations, a panga with blood stains, a bolt nutted rungu, a greyish jamper with blood stains and a panga cut, a white seat cover with blood stains and assorted clothes were recovered. During the investigations, it was found that the deceased's mother had differences with her husband which led to separation with her leaving their 2 children in the husband's care who then hired the accused to help him take care of the children. The deceased's father reconciled with his wife since the accused was mistreating the children and was alcoholic and the wife delivered another child on the 5th of September, 2021 and upon the delivery of the child, the deceased's father requested his wife to come back to him. The deceased's mother went back to her husband but was met with hostility from the accused who decided to eliminate her and her son.
8. The doctor conducted postmortem on the 8th day of September, 2021 and confirmed the opinion that the cause of death was as a result of asphyxia secondary to gastric contents aspiration/head injury. A manhunt was initiated which led to the arrest of the accused who was charged with attempted murder vide Kabarnet criminal case No. E003 of 2021 where she was convicted and sentenced to serve 20 years imprisonment.
9. The police file was compiled and the accused arraigned before court and charged with the offence of murder now reduced to manslaughter following plea bargain. The prosecution informed the court that the accused is currently serving 20 years imprisonment vide Kabarnet Criminal case No. E003 of 2021 for a charge of attempt to murder the mother of the deceased herein.

Pre-Sentence Report

10. The court called for a pre-sentence report which was filed on the 18th September, 2023. From the report, the accused has a total of 21 siblings but to her biological mother, they are 10 children. She had formal education up to class 8 but did not proceed to secondary due to financial constraints. She engaged in casual jobs and in the year 2015 she returned to her home in Mochongoi and got married to Kevin Korir and together they were blessed with one child who is now 7 years old. She experienced domestic violence in her marriage which led to her separating from her husband. She returned to her parents' home and later got hired as a house help by the deceased's father to take care of his 2 children then. The accused delivered a second child now aged 13 months old while in custody.
11. She admits the offence but says she committed out of anger. She confirmed that she is currently serving a 20 years sentence for the offence of attempted murder and her prayer is that the Honourable court



grants her a concurrent sentence and prays to be transferred to Nakuru Women's prison so that her family can pay her a visit.

12. From the report, the deceased's parents are not in agreement with the charge being reduced to manslaughter; they are still bitter with the offender for the offence she committed and pray for justice for their child. They both opposed a non-custodial sentence on ground that the accused is not remorseful and her family has never taken any steps for reconciliation or forgiveness to them. They say they miss their child and are still traumatized by the death of their son and the mother has been forced to move out of their matrimonial home to her parents' home in Marakwet because they lacked peace staying in the same house where her son was killed. The deceased's sister has been traumatized to the extent of losing concentration while in class leading to poor performance academically and has developed fear in her life.
13. The accused's father never opposed a community-based sentence stating that the accused has two children to take care of (one who is with her in custody and the other who is now with her biological father). He alleged that he has talked to her and she regrets having committed the offence and promised not to repeat again; his thinking is that his daughter might have done so because she was expectant and the depression that comes along with pregnancy might have caused her to do so.
14. The local administration is of the view that if the accused is granted community rehabilitation, she should relocate to another place and her family should do reconciliation with the deceased's family first before her release. The accused's former neighbors are opposed to accused being granted community rehabilitation stating that she should serve her sentence in custody to deter such brutal acts in their community.

Mitigation

15. The defence counsel Mr. Kipkulei mitigated on behalf of the accused. He submitted that the accused is a young lady aged 24 years with 2 children aged 7 and 1 ½ years, she is the sole bread winner to the 2 children after she separated with her first husband. The first child is now under the care of his grandparents while the 2nd child who is with her in custody was born with the deceased's father. The incident is regretted by the accused as it occurred out of bad mood swings due to pregnancy. That the bad mood swings were triggered by the intrusion by her co-wife who is the mother of the deceased who came back to her matrimonial home. She seeks leniency from the court and prays that since she is serving another sentence of 20 years, the court considers that she has learnt the consequences of committing crime since the convict has been of good character as espoused in the probation report.
16. The state counsel Ms Ratemo submitted that the convict is not remorseful at all for the offence she committed. She submitted that the incident happened at night when the convict had intention of killing both the mother and the child and it is by God's grace that the mother of the deceased survived; and the excuse given that the convict was pregnant at the time of committing the offence does not justify killing a child who was 7 years and after inflicting grievous harm to the mother leaving the child was defenseless.
17. The state counsel further submitted that a promise of marriage does not justify killing a child and being pregnant at the time, she ought to have considered whether killing of a child would have resulted to her being married to the child's father. She submitted that the convict was not drunk; that she was of a sober mind at the time of the incident; that the incident did not only affect the child killed but also the child who was in the house who witnessed her brother being killed. She submitted that the convict aimed a bolted rungu on the head of the child after which she suffocated and thereafter hid his body under the bed.



18. She further submitted that the pre-sentence report exhibits psychological effect on the mother and the remaining child who requires to be taken through counselling to enable them her continue with life; and the action also tore the family of the deceased apart. She recommended that the convict be sentenced to 50 years imprisonment and cited the case of Rep vs Kevin Amondi Amo [2022] eKLR where Justice Aburili sentenced the convict to 50 years imprisonment in a case where plea bargaining was entered and the deceased had been brutally killed and another victim sustained grievous harm.

Determination

19. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life. Life imprisonment has however been declared unconstitutional by the court of appeal in Malindi Court of Appeal Criminal Appeal No. 12 of 2021, Julius Kitsao Manyeso Versus Republic. The court has discretion to impose a lesser sentence depending on circumstances of each case.
20. I take note of the fact that accused is serving 20 years imprisonment for attempting to kill the mother of the deceased herein; there is no doubt that she killed the 7-year-old defenceless child in a very cruel manner, by hitting his head with bolt headed rungu after which she went ahead to suffocate him and hid him under the bed. This was after she had inflicted serious injuries on the child's mother and the child had no one to come to his aid. The act was torturous. I agree with the state counsel that reconciliation of the deceased's mother with her father which meant less chances of being married by the deceased's father was not justification to kill the child in such a cruel manner. From the foregoing I am of the view that she deserved deterrent custodial sentence.

Final Orders: -

21. ...
1. Accused to serve 30 years imprisonment.
 2. The sentence herein to run concurrently with the sentence accused is serving now.
 3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 26TH DAY OF OCTOBER 2023.

.....
RACHEL NGETICH

JUDGE

In the presence of:

Mr. Momanyi & Mr. Elvis – Court Assistants.

Mr. Kipkulei for Accused.

Ms Ratemo for State.

Accused present.

